IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.3

Civil Writ petition No. 1096/2003(M/S)

Dr. Rajesh Tiwari …Petitioner.

Vs.

Additional District Judge/F.T.C.-I

Dehradun and others ….Respondents.

Hon'ble Irshad Hussain, J.

This is a petition under Article 227 of the Constitution of India against the impugned judgment and order dated 14-7-2003 passed under revisional jurisdiction by the Additional Sessions Judge, whereby the order dated 27-10-2001 passed by the trial court dismissing the amendment application of the plaintiffs was set aside and the trial court was directed to hear and decide the amendment application afresh taking into consideration the observations made in the said judgment and order.

2- Heard Sri Arvind Vashistha learned counsel for the petitioner and Sri Sharad Sharma learned counsel for the respondent No.2.

3- The learned counsel for the petitioner submitted that in view of the amended provisions of section 115 of the C.P.C. made effective from July 2002 the impugned order of the trial court was not amenable to the revisional jurisdiction and further the learned Additional District Judge made observations on the merit of the case which will prejudice his cause when the application for amendment shall be heard afresh after remand by the impugned judgment and order. Considering the said legal aspect and also having gone through the observations made in the impugned judgment it may be directed that the learned trial court shall decide the amendment application afresh after giving an opportunity of hearing to the parties to the original suit without being influenced by the observations made in the judgment of the revisional court.

4- The petition is disposed of accordingly. The trail court is directed to decide the amendment application afresh after hearing both the parties and without being influenced by the observation, if any, made on the merit of the amendment application in the judgment and order dated 14.7.2003.

(Irshad Hussain, J.)

Dated:31-10-2003

ISB